

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>UNITED STATES OF AMERICA,</b>  <div style="text-align: center;"><b>Plaintiff,</b></div> <div style="text-align: center;"><b>vs.</b></div> <b>STEVEN DWAYNE THOMAS,</b>  <div style="text-align: center;"><b>Defendant.</b></div>	) ) ) ) ) ) ) ) ) )	<b>CASE NO. 8:07CR127</b>           <b>TENTATIVE FINDINGS</b>
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The Court has received the Presentence Investigation Report (“PSR”) provided on or about July 12, 2007, and the Defendant’s objections thereto (Filing No. 21). The government adopted the PSR. (Filing No. 20.) The Court has also received the Defendant’s motion for downward departure and supporting brief (Filing Nos. 23, 24.) See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

***Objections***

Paragraph 28 of the PSR assigns a 4-level upward adjustment in the Defendant’s offense level pursuant to U.S.S.G. § 2K2.1(b)(6), which provides for an enhancement if a defendant: used or possessed a firearm in connection with another felony offense; or possessed or transferred any firearm with knowledge, intent or reason to believe that it would be used or possessed in connection with another felony offense. The Defendant objects to the enhancement. The objection will be heard at sentencing. The government bears the burden by a preponderance of the evidence. If the parties need more than 30

minutes for the entire sentencing hearing, they should immediately contact the courtroom deputy or chambers and reschedule the hearing.

***Motion for Downward Departure or Deviation***

The Defendant moved for a downward departure or deviation based on over representation of criminal history. (Filing No. 23.) The motion will be heard at sentencing. The burden is on the Defendant by a preponderance of the evidence.

IT IS ORDERED:

1. The Defendant's Objections to the Presentence Investigation Report (Filing No. 21) will be heard at sentencing;
2. The Defendant's motion for downward departure or deviation (Filing No. 23) will be heard at sentencing;
3. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;
4. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
5. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final;

6. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and

7. If the parties need more than 30 minutes for the sentencing hearing, they shall immediately contact the courtroom or deputy or chambers and reschedule the hearing.

DATED this 24<sup>th</sup> day of July, 2007.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge